C.S.1001 (1)

SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO. 1937 /2006

PETITIONER Mukesh Paul,
S/o Late Surendra Paul,
Aged about 36 years,
R/o. Tarbahar, Bilaspur (C.G.)

VERSUS

RESPONDENTS

1. Union of India, through Secretary, Ministry of Railways, New Delhi
2. Divisional Railway Manager, South East Central Railway, Bilaspur Division, Bilaspur (CG)
3. Sr. Divisional Mechanical Engineer, South Eastern Railway (Now South East Central Railway), Bilaspur (CG)
4. Collector, Bilaspur (C.G.)
5. Sub-Divisional Officer, Bilaspur (C.G.)
6. Tahsildar, Bilaspur (C.G.)

P.R. No. 1994/26
Presented by Shri Akhilesh Dubey
Dated 12/4/06
AMIT CHAUDHARI
STANDING COUNSEL RAILWAYS
HIGH COURT OF CHHATTISGARH

TRUE COPY

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS PROHIBITION AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS:

The petitioner, above-named, most humbly and respectfully submit as under:

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

88

आदेश पत्रक

मामला क्रमांक WP 1937/06 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

24.4.2006

Mr. Ashish Shrivastava, Advocate for the petitioner.

Mr. Amit Choudhary, Standing Counsel with Miss Samta Jain, Advocate for respondents No.2 & 3.

Shri Sanjay Ku. Agarwal, Panel Lawyer for the State.

Heard.

By this writ petition under Article 226/227 of the Constitution of India the petitioner, who was working as Helper (Khalasi) in South East Central Railways, Bilaspur, has challenged the order dated 3.7.2002 passed by respondent No.3-Sr. Divisional Mechanical Engineer, SECR, Bilaspur; order dated 16/17-1-2006 passed by respondent No.4-Collector, Bilaspur and order dated 15/17-2-2006 passed by respondent No.2 Divisional Railway Manager, SECR, Bilaspur, whereby the services of the petitioner have been terminated on the ground that he has secured the appointment based on a false caste certificate of OBC, whereas, the petitioner was not the candidate of OBC community.

The oral preliminary objection raised by learned Standing Counsel for respondents No.2 & 3 is that since this is a service matter and being the employee of Railways, the petitioner has remedy to approach the Central Administrative Tribunal in the first instance, as the Central Administrative Tribunal has been created under the Administrative

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

89

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Tribunals Act, 1985 to deal with service matters. Therefore, this Court should not entertain this writ petition.

On the other hand, learned counsel for the petitioner argued that it is true that the Central Administrative Tribunal has the jurisdiction in this matter, but when the principles of natural justice have been violated, the petitioner has a right to approach this Court directly under Article 226/227 of the Constitution of India. He placed reliance on the judgments of the Hon'ble Apex Court in the matter of **Harbanslal Sahnia and another V. Indian Oil Corpn. Ltd. and others** reported in **(2003) 2 Supreme Court Cases 107** and **Whiripool Corporation Versus Registrar of Trade Marks, Mumbai and others** reported in **(1998) 8 Supreme Court Cases 1.**

In Harbanslal Sahnia's case, the matter for consideration before the Hon'ble Apex Court was that whether the dealership of petitioner in petroleum products appointed by Indian Oil Corporation Limited was rightly cancelled. On facts, the Court reached to the conclusion that '*the order which was challenged was issued on irrelevant and non-existent grounds.*' The Court further held that '*in appropriate cases, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies; (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where*

[पीछे देखिये

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

50

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.'

This judgment was passed placing reliance on earlier decision of the Hon'ble Apex Court in the matter of Whirlpool's case in which the Hon'ble Apex Court held that "*the prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose". The High Court has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by the Supreme Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.*"

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The above decisions cited by learned counsel for the petitioner on facts are not applicable to the present case, for the reasons that the Central Government by the Act No.3 of 85 enacted the Administrative Tribunals Act, 1985 and under Section 14 the Central Administrative Tribunal have been authorized to deal with the service matters of various categories of persons specified therein and the counsel for the petitioner has not disputed that service matters of Railway employees are also being taken up by the Tribunal. Section 28 of the Act creates bar, Section 28 of the Act came up for consideration before the Constitution Bench of the Hon'ble Apex Court in the matter of **L. Chandra Kumar V. Union of India and others** reported in **AIR 1997 Supreme Court 1125** and the Constitution Bench held that "*Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 & 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a*

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the complete to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5 (6) of the Act is valid and constitutional and is to be interpreted in the manner we have interpreted."

Therefore, as per direct decision in connection with the Administrative Tribunals Act, 1985, the Hon'ble Apex Court has held that the Tribunals shall continue to act as Courts of first instance and it will not, therefore, be open to the litigants to directly approach the High Courts, even in cases where they question the vires of statutory legislation by overlooking the jurisdiction of the concerned Tribunal.

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

93

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

When the Central Administrative Tribunal has been created specially for expeditious disposal of service matters of the various categories of persons specified therein, therefore, by-passing the Central Administrative Tribunal directly this writ petition has been filed. Hence, I am of the opinion that this writ petition is not maintainable and the petitioner is directed to approach, in the first instance, the Central Administrative Tribunal, Jabalpur, who has jurisdiction over this area.

The petition is disposed of accordingly.

Consequently, M.(W.)P. No.1588/06 and I.A. No.3832/06 also stand disposed of.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge

Roshan/-

[पीछे देखिये

29.4.06